

City of Milpitas

455 E. Calaveras Blvd.
Milpitas, CA 95035

RECEIVED

JUL 7 2006

CITY OF MILPITAS
PLANNING DIVISION



1

File with: Milpitas City Clerk
455 E. Calaveras Blvd.
Milpitas, CA 95035

PLANNING: (408) 586-3279
CITY CLERK: (408) 586-3001

APPEAL FORM

1. APPELLANT(S):

Name PETER CHEN
Address: 269 W. CALAVERAS BLVD
City, Zip MILPITAS, CA 95035

2. DECISION BEING APPEALED:

I (we), the Undersigned, do hereby appeal a decision of the Planning Commission's ~~approval~~ of: USE PERMIT AMENDMENT # UAZ006-6
DENIAL

PROJECT: KINGCRAB RESTAURANT (18'x20' DANCE FLOOR)

LOCATION: 269 W. CALAVERAS BLVD

DATE OF DECISION BEING APPEALED:

JULY 6, 2006 JUNE 28, 2006

3. STATE THE SPECIFIC RELIEF WHICH THE APPLICANT SEEKS:

APPLICANT IS SEEKING APPROVAL FOR THE USE
OF 18'x20' DANCE FLOOR DURING BANQUETS
DURING EVENING HOURS AND ON WEEK ENDS

for Aug 15 CC mtg.

4. SUMMARY OF REASONS WHY THE APPELLANT CLAIMS
ENTITLEMENT TO THE RELIEF SOUGHT:

SEE ATTACHED

If more space is needed, attach additional sheets.

DATE: 7-6-2006

SIGNATURE

Seizure Ch

ADDRESS

269 W. CALAVERAS BLVD

CITY

MILPITAS, CA 95035

PHONE

408 263-2228

Paid



Filing Fee \$100.00

PLEASE NOTE: Additional
fees will be required for an
expedited process.

RECEIVED BY:

Planning staff

DATE:

7/7/06

The application for 18'x20' of dance floor was disapproved on account of Lunch hour parking problem between the adjacent parcel owners. This parking problem was not solely because of patrons from King Crab Restaurant, this included Lee's Sandwiches as indicated during the hearing on June 28, 2006. But the real reason for this denial was based on this property owner's non-cooperation with the adjacent property owner for the lunch hour parking situation, this was stressed many times by the commissioners.

The owner of King Crab Restaurant is the only one that is being punished for this dispute.

The application should be reversed for the following reasons:

- 1) Parking requirements was approved per use permit P-UA2003-7 on June 11, 2003. No violation has been sited ever.
- 2) The use for the dance floor application is strictly during banquets and is always during evening hours and on weekends. This was pointed out by the applicant during the hearing. There is no increase of occupant load for this application. There is no parking problem during the evening hours. The parking problem in dispute which caused this disapproval occurs during lunch hours. This disapproval does not resolve the lunch hour parking problem but really restricts the King Crab owner's ability in securing very competitive wedding banquet business.
- 3) All other concerns as discussed by the planning commissioners can be mitigated by the restaurant owner if becomes an issue

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CITY OF MILPITAS
PLANNING DIVISION

FINDINGS AND SPECIAL CONDITIONS OF APPROVAL

USE PERMIT AMENDMENT NO. UA2006-6

PJ #2322

Appeal of the Planning Commission Decision to deny Use Permit Amendment No. UA2006-6 to permit a 12'x18' dance floor for King Crab Restaurant located at 269 W. Calaveras Blvd. (APN 022SE PERMIT AMENDMENT NO. UA2006-6 TO PERMIT A 12'X18' DANCE FLOOR FOR KING CRAB RESTAURANT LOCATED AT 269 W. CALAVERAS BLVD. (APN: 022-25-041), ZONED GENERAL COMMERCIAL (C2). (STAFF CONTACT: CINDY HOM (408)586-3284)

Planning Commission Denial: June 28, 2006

Uphold the Planning Commission denial based on the below finding:

1. Use Permit Amendment to add the dance floor would be inconsistent with Finding No. 3 in the Planning Commission Staff Report dated June 28, 2006 that reads:
"The project will not create any negative community impacts or be detrimental to public health, safety and general welfare. The dance floor is an ancillary use to primary restaurant use and will not impact parking, noise, or odors."

OR

Appeal the Planning Commission denial and approve the Use Permit Amendment on the following findings and special conditions:

1. The proposed project is consistent with the General Plan in terms of land use and Policies Implementing policies 2.a-I-3 and 2.a-I-6, which "encourages economic pursuits that will strengthen and promote development through stability and balance" as well as "...endeavors to maintain a balanced economic base that resists downturn in any economic sector." In addition, it is consistent with the General Commercial (C2) Zoning district and is identified as a conditionally permitted use.
2. Although the proposed project does not require Midtown upgrades, the restaurant expansion and site improvements approved in 2003 comply with various design guidelines and standards of the Midtown Plan.
3. The proposed project will not create any negative community impacts or be detrimental to public health, safety and general welfare. The dance floor is an ancillary to the primary restaurant use and will not impact parking, noise, or odors because the proposal will not require additional parking per the Milpitas Zoning Ordinance requirements for parking. It is a night use that will not exacerbate the lunchtime hour parking demand. The applicant is also willing to display a sign in the waiting area that states patrons should not park in Milpitas Calaveras Center

parking lots and to hire a parking monitor on Thursdays and Fridays to direct customers in the Calaveras Center Parking lot as suggested by the property owner of the adjacent shopping center.

4. The Project is categorically exempt from further environmental review pursuant to Class 21, Section 15321 of the State CEQA Guidelines.

Special Conditions of Approval:

1. This Planning Commission approval is to allow for a 12' x 18' dance floor only. Any changes to the floor plan or modifications to the conditions of approval will require Planning Commission approval of an amendment to this Use Permit and a public hearing. Minor modifications can be submitted to the Planning Division for processing pursuant to Section 42 of the Milpitas Zoning Ordinance. (P)
2. This use shall be conducted in accordance with all federal, state and local laws and regulations. (P)
3. Dancing is prohibited as a nightly use and shall be limited for banquet occasions only. (P)
4. Associated live entertainment and pre-recorded music used in conjunction with the dance floor shall be limited so that the sound shall be confined to the interior of the structure; and further that when the live entertainment is performed, all windows and doors within the facility shall be closed, except when entering and leaving by the main entrance of the facility. That any entertainment (live, disc jockey, etc.) provided shall not disturb any nearby business and shall not be audible outside of the building. (P)
5. That the hours of operation shall be from 11:00 a.m. to 2:30 p.m. and 5:00 to 10:00 p.m. Monday-Friday; 10:00 a.m. to 3:00 p.m. and 5:00 p.m. to 10:00 p.m. Saturday and Sunday. Further, that any event which wishes to operate beyond 10:00 p.m. shall be subject to approval of the Milpitas Planning Division and Police Department. Said request shall be submitted to the Planning Division at least 30 days prior to the date of the event, to allow adequate time for the Police Department and other City Departments to review the request and to impose additional conditions of approval. (P)
6. That the operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. The noise generated by the proposed use shall comply with the provisions of Chapter 213 of the Milpitas Municipal Code. (P)
7. Applicant shall submit a security plan to the approval of the Milpitas Police Department which shall include, but not be limited to, the provision of security guards for restaurant and parking lot security and to maintain order therein and prevent any activity which would interfere with the quiet enjoyment of property by nearby business tenants and residents. Said personnel shall be clothed in such a manner as to be readily identifiable as security. (P)
8. Offsite patron parking on adjacent properties is prohibited. (P)
9. Per Chapter 200, Solid Waste management, V-2003.10, General Requirement, applicant/property owner shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 Owner Responsible for Solid Waste, Recyclables, and Yard Waste, applicant / property owner

shall subscribe to and pay for solid waste service rendered. Prior to occupancy permit issuance (start of operation), the applicant shall submit evidence to the City that a Services (Formally BFU) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the applicant shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)

10. It is the responsibility of the applicant to obtain any necessary encroachment permits or approval from affected agencies or private parties. Copies of these approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
11. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit. (E)
12. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the Nation Flood Insurance Program shows this site to be in A Special Flood Hazard Area, Zone AE. The proposed work to the existing structure is considered non-substantial improvement and the zone designation is given for information only. (E)
13. This "S" Zone Amendment (P-SA2003-23) and Use Permit Amendment No. P-UA2003-7 approval is for an approximate 1,700 square foot building addition, 84 seat increase, and 25 space parking reduction as shown on approved plans dated June 11, 2003, except as may be otherwise modified by these conditions of approval. Any major modifications to the building or site shall require review and approval by the Planning Commission of an amendment to this S-Zone Approval. Minor changes, as per Sec. 42-10 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff or Planning Commission Subcommittee. (P) Previous Conditions of Approval
14. The maximum approved seating for this expanded restaurant is 204 indoor seats (including the waiting area). Prior to issuance of a certificate of occupancy for this use, a sign measuring at least 8½ inches by 11 inches, with a lettering height of at least 3 inches, shall be placed in a conspicuous location near the restaurant front entrance stating "Maximum dining room seating: 192, as per Use Permit Amendment No. P-UA2003-7 granted by the Planning Commission on June 11, 2003." (P) Previous Conditions of Approval
15. The applicant shall comply with all conditions of Planning Commission Resolution No. 168 (attachment), a resolution of standard conditions for commercial development. (P, E – all items) Previous Conditions of Approval
16. The applicant shall comply with City Council Resolution No. 6296, a resolution of "Guidelines for Recycling Enclosures" (attachment). (P – all items) Previous Conditions of Approval
17. Building permit plans shall reflect that all new and existing rooftop equipment shall not be visible from any ground views. (P) Previous Conditions of Approval
18. Prior to building permit issuance, the applicant shall submit tenant improvement plans that incorporate a scrubber or carbon filter, or similar equipment, on the roof or vent to control odors. The equipment shall be screened from view to the approval of the Planning Division and reflected on the tenant improvement plans. (P) Previous Conditions of Approval
19. The applicant shall submit revised landscaping plans (landscape plans shall be completed and stamped by a licensed landscape architect) prior to building permit

issuance that incorporate the following changes: (P) Previous Conditions of Approval

20. The revised landscaping plan should incorporate special treatments at driveway entrances into the shopping center. The revised landscaping plan shall incorporate 24-inch box trees that are of the broadleaf and deciduous type. (P) Previous Conditions of Approval
21. The revised landscaping plan shall use native and drought-tolerant plant materials.
 - a. The revised landscaping plan shall indicate new landscaping areas (minimum of 400 square feet).
 - b. Mulch planting beds as a replacement for turf areas where possible, including the use of bark chips, wood grinding or leaves.
 - c. The revised landscaping plan shall have plantings grouped according to water needs.
 - d. An automatic water system utilizing low volume drip, spray or bubbler emitters shall be installed in landscape areas. Previous Conditions of Approval
22. Prior to issuance of a certificate of occupancy, the applicant shall provide proof of five (5) new garbage enclosures (front load service) or two (2) new compactors (with enclosures) for the entire shopping center. The new enclosures shall match the architecture and colors of the existing building. (P, cross referenced with Engineering Special Condition No. 30) Previous Conditions of Approval
23. Prior to issuance of a certificate of occupancy, an "Odorestor" unit shall be installed on the garbage bin and maintained in good working order. "Odorestor" units may be ordered through BFI. Please contact Cynthia Jackson, BFI Customer Service Supervisor, at (408) 432-1234 for more information. (P) Previous Conditions of Approval
24. Prior to issuance of building permits, plans shall include, at a minimum, two signs (to the approval of the City, one at each driveway to the rear area) that inform patrons of available parking at the rear of the building. (P) Previous Conditions of Approval
25. The driveway to the rear parking area at the west end of the site shall be maintained as a minimum 20-foot wide two-way drive aisle. (P) Previous Conditions of Approval
26. Prior to issuance of building permits, plans shall include "no parking" signs along the western access way to the rear parking area to the approval of the City. (P) Previous Conditions of Approval
27. During all construction activities, the developer shall adhere to the following Best Management Practices as suggested by the Bay Area Air Quality Management District (BAAQMD). These notes shall be placed on the Grading and Construction plans prior to permit issuance: (P) Previous Conditions of Approval
 - a. Watering all exposed or disturbed soil surfaces, at least twice daily, as necessary to eliminate visible dust plumes;
 - b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a two feet freeboard level within their truck beds;
 - c. Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles of debris, soil, sand or other materials;
 - d. Suspension of all earthmoving or other dust-producing activities or equipment during periods of high winds when watering cannot eliminate dust plumes;

- e. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
 - f. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
 - g. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
 - h. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more);
 - i. Limit traffic speeds on unpaved roads or areas to 15 mph.
28. During construction, the developer/applicant shall adhere to the following Best Management Practices (BMPs) as suggested in the Santa Clara Valley Non-point Source Pollution Control Program's "Best Management Practices for Industrial Storm Water Pollution Control": (P) Previous Conditions of Approval
- a. Store building materials under cover or in enclosed areas.
 - b. Before painting, spread a ground cloth to collect paint.
 - c. Mix paint indoors before starting work.
 - d. Keep paint buckets away from contact with storm water.
 - e. Capture any paint spills before they flow into a storm drain.
 - f. During painting cleanup use proper procedures and prevent paint from flowing into storm drains.
29. All new utilities shall be placed underground or in subsurface conduits. (P,E) Previous Conditions of Approval
30. The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all state and local health and sanitation standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P) Previous Conditions of Approval
31. The business owner shall post signs (in English, Vietnamese, Chinese, Filipino and Spanish) inside the premises for all employees, which identify procedures for the food delivery and disposing of garbage prior to the issuance of a certificate of occupancy. (P) Previous Conditions of Approval
32. The preparation and storage of food shall not be permitted outside of the establishment in perpetuity. (P)
33. Washing of containers, equipment, and floor mats shall be conducted in the kitchen area so that wash water may drain into the sanitary sewer in perpetuity. (P) Previous Conditions of Approval
34. Prior to issuance of a certificate of occupancy, the business owner shall submit a report detailing a program assigning restaurant staff perpetual responsibility for complying with the following guidelines (P) Previous Conditions of Approval
- a. Keep garbage dumpsters clean inside and out; replace dirty or leaking dumpsters with new, clean ones.

- b. Double or triple bag waste to prevent leaking.
 - c. Place, do not drop or throw, waste-filled bags, to prevent leaking.
 - d. Keep the ground under and around the garbage dumpsters swept.
 - e. Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.
 - f. It is expected that Best Management Practices for solid waste handling will advance over time, thus it is the expectation that the applicant will modify their practices in accordance with future standards.
35. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P) Previous Conditions of Approval
36. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P) Previous Conditions of Approval
37. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a building permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E) Previous Conditions of Approval
38. At the time of building permit plan check submittal the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to any permit issuance. (E) Previous Conditions of Approval
39. Prior to building permit issuance, the developer shall obtain design approval and bond for all necessary on-site public improvements, including but not limited to, relocation of existing water main, fire hydrant and water services. Plans for all public improvements shall be prepared on Mylar (24"x 36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. (E) Previous Conditions of Approval
40. Prior to any permit issuance the developer shall dedicate a new 15-foot wide water line easement and easement for relocated water meter, and successfully process the vacation of the existing water line easement. (E) Previous Conditions of Approval
41. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E) Previous Conditions of Approval

42. All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structures are permitted within City easements. (E) Previous Conditions of Approval
43. Prior to occupancy permit issuance, applicant or the shopping center owner shall construct a total of five trash enclosures or two compactor enclosures for the entire shopping center. The proposed enclosures shall be designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the enclosures. (E, Cross referenced with Planning Division Special Condition No. 9) Previous Conditions of Approval
44. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial use: (E) Previous Conditions of Approval
45. Maintain an adequate level of service for trash collection. Increase service subscription to: garbage, 1 – 4cyd, 5x/wk; recycling, 1 – 4cyd 3x/wk. Previous Conditions of Approval
 - a. Maintain recycling services including separate services for beverage containers.
 - b. Maintain a tallow account and keep the tallow bins clean.
46. After the applicant has started its business, the solid waste service shall be evaluated by a BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E) Previous Conditions of Approval
47. Prior to any work within public right-of-way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E) Previous Conditions of Approval

Planning = (P)

Engineering = (E)

Date: June 28, 2006

Item No.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: New Business

Report Prepared by: Cindy Hom

Public Hearing: Yes: X No:

Notices Mailed On: 06/16/06

Published On: 06/15/06

Posted On: 06/16/06

TITLE: USE PERMIT AMENDMENT NO. UA2006-6

Proposal: Request to amend existing use permit to allow a 12' x 18' dance floor for King Crab Restaurant located in Calaveras Plaza.

Location: 269 W. Calaveras Boulevard

APN: 022-25-041

RECOMMENDATION: Approve with conditions.

Applicant: Pei Ying Chen & Zhuan Nam Wu 269 W. Calaveras Boulevard, Milpitas, CA 95035.

Property Owner: Lisa Lo, 1105 Tanglewood Way, San Mateo, CA 94403.

Previous Action(s): "S" Zone Approval, Use Permits and Amendments

General Plan Designation: General Commercial

Environmental: Categorically exempt pursuant to Class 1, Section ("15301") of the California Environmental Quality Act Guidelines

Present Zoning: General Commercial ("C2")

Existing Land Use: Multi-tenant shopping center

Agenda Sent To: Applicant/Owner (same as above)

Attachments: Site Plan, Applicant's Letter

PJ: 2322

BACKGROUND

In 1976, Planning Commission granted "S" Zone approval for the development of Calaveras Plaza. Since then, subsequent amendments to the approval have been obtained. Amendments include modifications to architectural elevations, sign proposals, and parking lot re-striping. Numerous use permits have also been approved for various projects within the plaza including Use Permit No. 479 that was approved in 1980 for a restaurant that King Crab Restaurant currently occupies. Use Permit No. 479 also allowed the sale of beer and wine in conjunction

with the restaurant. In June 2003, a "S" Zone and Use Permit Amendment were approved by the Planning Commission that allowed for the expansion of King Crab Restaurant. This Planning Commission approval included a 1,700 square foot building addition, additional seating, parking reduction, construction of new trash enclosures for the Calaveras Plaza shopping center, new landscaping and a pedestrian connection to Calaveras Boulevard. In December 2004, the Planning Commission approved a Use Permit Amendment that allowed onsite consumption of all types of alcohol.

Site Description

Calaveras Plaza serves as a neighborhood shopping center and provides a variety of retail and commercial services. Tenants within the Calaveras Plaza Shopping Center include Save Mart, Kinko's and numerous restaurants. Calaveras Plaza is a 7.63-acre site that is situated on four parcels. The project site is located north of West Calaveras Boulevard, west of Butler Street, east of South Abbott Avenue, and south of a single-family residential development. Surrounding land uses consist of residential uses that are located to the immediate north and west side of the project site and Serra Center with other various retail and restaurant uses located to south and east side of the project site.

THE APPLICATION

The application is submitted pursuant to Section 57 ("Use Permits") and Section 19.03-36 (General Commercial, Conditional Uses, Restaurants which include dancing). The applicant is requesting approval for a 12' x 18' dance floor to be used as part of the restaurant's banquet facilities. No other changes or modifications are proposed with this application

PROJECT DESCRIPTION

Site Layout and Access: The existing building is located on the northeastern portion of the property. The buildings are configured in a "C" shape with parking mainly to the north and south. There are also two freestanding buildings, one at the corner of Butler Street and other at the southwest corner of the property, along Calaveras Boulevard. Access to the site is located off of Calaveras Boulevard, Butler Street and from the shopping center to the west.



USE PERMIT FINDINGS

Any approval of a Use Permit or Use Permit Amendment requires that the Planning Commission make the following findings:

1. The proposed use is consistent with the Milpitas General Plan.
2. The proposed use is consistent with the Milpitas Zoning Ordinance.
3. The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to public health, safety, and general welfare.

The following sections explain how these findings can be made for the proposed project as submitted.

Conformance with General Plan

The project conforms to the General Plan in that the use directly relates to:

Implementing Policies 2.a-I-3, which encourages economic pursuits, which will strengthen and promote development through stability and balance.

Implementing Policy 2.a-I-6, which endeavors to maintain a balanced economic base that resists downturn in any economic sector.

The proposed dance floor provides an ancillary use to the full service restaurant and will add to the City's economic vitality by providing banquet facilities within the City. It will also help maintain this business in its location and increase the patrons of the shopping center.

Conformance with Zoning Ordinance

The purpose of the General Commercial (C2) District is to provide, "...the general commercial needs of the City and to promote stable, attractive commercial development which will afford a pleasant shopping environment." The dance floor is an ancillary use and is consistent with the C2 Zoning. Per section 19.03-36, "Restaurants including dancing are conditionally permitted and meets the intent and purpose of the C2 Zoning district by providing a retail use in a multi-tenant center. This use permit amendment complies with the development standards of the C2 Zone and parking regulations. The Project does not propose any exterior modifications, any changes to business operations that would affect parking, traffic, circulation, or solid waste generation beyond what it is already approved for.

Parking

Staff has provided a summary table (below) of the Parking for the various uses in the center. An analysis of the data shows that 464 spaces are required, that 338 spaces are allocated for uses in the center and that 69 spaces were approved for parking reductions. The balance of 57 spaces is presumed to be allocated to three retail tenants on the table for which data is not available. Because the project does not propose additional seats and the dance floor will be used only in conjunction with banquet events staff recommends that no additional parking be required.

Table 1: Parking Summary

Address	Use	Parking Allocated	Parking Required	# of Stalls Approved for Parking Reduction
177 Calaveras	Restaurant	15	46	
179 Calaveras	Retail	14	20	6
181 Calaveras	Retail	10	8	2
191 Calaveras	Retail	14	14	
201 Calaveras	Retail	4	4	
215 Calaveras	Retail	139	139	
217 Calaveras	Restaurant	10	20	
219 Calaveras	Dental	6	5	
221 Calaveras	Retail			
223 Calaveras	Retail	4	4	
231 Calaveras	Restaurant	13	20	7
233 Calaveras	Restaurant	12	23	11
257 Calaveras	Retail	30	30	
261 Calaveras	Retail			
263 Calaveras	Restaurant		8	
265 Calaveras	Restaurant	1	2	
269 Calaveras	Restaurant	29	68	25
273 Calaveras	Restaurant	6	15	9
275 Calaveras	Restaurant	10	17	7
279 Calaveras	Restaurant	21	21	2
Total		338	464	69

Total Number of Stalls Provided onsite = 418

A review of Planning Division files indicates that many of the restaurant uses were approved with parking modifications based on parking studies prepared for the various use permit applications for restaurants with parking modifications. Currently, Calaveras Plaza provides signage to indicate a designated parking area and 30 minute parking signs in key locations to encourage turn over of parking spaces. In addition, the adjacent properties have also installed signs to discourage patrons from parking in the adjacent shopping centers. To continue this effort, Staff *recommends* a condition of approval that prohibits any offsite parking on adjacent properties.

Conformance with Midtown Plan

All projects within the Midtown Area have to demonstrate compliance with the Specific Plan – including the Development Standards and Design Guidelines prior to any “S” Zone or Use Permit approval. In this case, required Midtown site improvements were included with the

approval for the expansion of King Crab's Restaurant in 2003. The proposed dance floor does not trigger any additional Midtown upgrades because it will be installed on existing floor area. Staff recommends a condition of approval that prohibits dancing as a nightly use and shall be limited for banquet occasions only.

COMMUNITY IMPACTS

The proposed use permit amendment to allow a dance floor is expected to have a positive community impact by making Calaveras Plaza a destination place for dining. As conditioned, the restaurant with on-premise consumption of alcohol would be a complementary use to nearby retail, residential, and office uses in the local vicinity.

CONFORMANCE WITH CEQA

The proposed project is categorically exempt from further environmental review pursuant to Class 1, Section 15301 ("Existing Facilities" – interior alterations) of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION

Approve Use Permit Amendment No. UA2006-6 with conditions based on the findings listed below.

FINDINGS

1. The proposed project is consistent with the General Plan in terms of land use and Policies Implementing policies 2.a-I-3 and 2.a-I-6, which "encourages economic pursuits that will strengthen and promote development through stability and balance" as well as "...endeavors to maintain a balanced economic base that resists downturn in any economic sector." In addition, it is consistent with the General Commercial (C2) Zoning district and is identified as a conditionally permitted use.
2. Although the proposed project does not require Midtown upgrades, the restaurant expansion and site improvements approved in 2003 comply with various design guidelines and standards of the Midtown Plan.
3. The proposed project will not create any negative community impacts or be detrimental to public health, safety and general welfare. The dance floor is an ancillary to the primary restaurant use and will not impact parking, noise, or odors.
4. The Project is categorically exempt from further environmental review pursuant to Class 21, Section 15321 of the State CEQA Guidelines.

SPECIAL CONDITIONS

1. This Planning Commission approval is to allow for a 12' x 18' dance floor only. Any changes to the floor plan or modifications to the conditions of approval will require Planning Commission approval of an amendment to this Use Permit and a public hearing. Minor modifications can be submitted to the Planning Division for processing pursuant to Section 42 of the Milpitas Zoning Ordinance. (P)
2. This use shall be conducted in accordance with all federal, state and local laws and regulations. (P)
3. Dancing is prohibited as a nightly use and shall be limited for banquet occasions only. (P)

4. Associated live entertainment and pre-recorded music used in conjunction with the dance floor shall be limited so that the sound shall be confined to the interior of the structure; and further that when the live entertainment is performed, all windows and doors within the facility shall be closed, except when entering and leaving by the main entrance of the facility. That any entertainment (live, disc jockey, etc.) provided shall not disturb any nearby business and shall not be audible outside of the building. (P)
5. That the hours of operation shall be from 11:00 a.m. to 2:30 p.m. and 5:00 to 10:00 p.m. Monday-Friday; 10:00 a.m. to 3:00 p.m. and 5:00 p.m. to 10:00 p.m. Saturday and Sunday. Further, that any event which wishes to operate beyond 10:00 p.m. shall be subject to approval of the Milpitas Planning Division and Police Department. Said request shall be submitted to the Planning Division at least 30 days prior to the date of the event, to allow adequate time for the Police Department and other City Departments to review the request and to impose additional conditions of approval. (P)
6. That the operator of the restaurant facility shall be responsible for the control of noise generated by the subject facility. The noise generated by the proposed use shall comply with the provisions of Chapter 213 of the Milpitas Municipal Code. (P)
7. Applicant shall submit a security plan to the approval of the Milpitas Police Department which shall include, but not be limited to, the provision of security guards for restaurant and parking lot security and to maintain order therein and prevent any activity which would interfere with the quiet enjoyment of property by nearby business tenants and residents. Said personnel shall be clothed in such a manner as to be readily identifiable as security. (P)
8. Offsite patron parking on adjacent properties is prohibited. (P)
9. Per Chapter 200, Solid Waste management, V-2003.10, General Requirement, applicant/property owner shall not keep or accumulate, or permit to be kept or accumulated, any solid waste of any kind and is responsible for proper keeping, accumulating and delivery of solid waste. In addition, according to V-200-3.20 Owner Responsible for Solid Waste, Recyclables, and Yard Waste, applicant / property owner shall subscribe to and pay for solid waste service rendered. Prior to occupancy permit issuance (start of operation), the applicant shall submit evidence to the City that a Services (Formally BFU) for commercial services to maintain an adequate level of service for trash and recycling collection. After the applicant has started its business, the applicant shall contact Allied Waste Services commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)
10. It is the responsibility of the applicant to obtain any necessary encroachment permits or approval from affected agencies or private parties. Copies of these approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
11. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to, plan check and inspection deposit. (E)
12. The Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) under the Nation Flood Insurance Program shows this site to be in A Special Flood

Hazard Area, Zone AE. The proposed work to the existing structure is considered non-substantial improvement and the zone designation is given for information only. (E)

13. This "S" Zone Amendment (P-SA2003-23) and Use Permit Amendment No. P-UA2003-7 approval is for an approximate 1,700 square foot building addition, 84 seat increase, and 25 space parking reduction as shown on approved plans dated June 11, 2003, except as may be otherwise modified by these conditions of approval. Any major modifications to the building or site shall require review and approval by the Planning Commission of an amendment to this S-Zone Approval. Minor changes, as per Sec. 42-10 of the Milpitas Zoning Ordinance, to approved plans may be approved by the Planning Division staff or Planning Commission Subcommittee. (P) Previous Conditions of Approval
14. The maximum approved seating for this expanded restaurant is 204 indoor seats (including the waiting area). Prior to issuance of a certificate of occupancy for this use, a sign measuring at least 8½ inches by 11 inches, with a lettering height of at least 3 inches, shall be placed in a conspicuous location near the restaurant front entrance stating "Maximum dining room seating: 192, as per Use Permit Amendment No. P-UA2003-7 granted by the Planning Commission on June 11, 2003." (P) Previous Conditions of Approval
15. The applicant shall comply with all conditions of Planning Commission Resolution No. 168 (attachment), a resolution of standard conditions for commercial development. (P, E – all items) Previous Conditions of Approval
16. The applicant shall comply with City Council Resolution No. 6296, a resolution of "Guidelines for Recycling Enclosures" (attachment). (P – all items) Previous Conditions of Approval
17. Building permit plans shall reflect that all new and existing rooftop equipment shall not be visible from any ground views. (P) Previous Conditions of Approval
18. Prior to building permit issuance, the applicant shall submit tenant improvement plans that incorporate a scrubber or carbon filter, or similar equipment, on the roof or vent to control odors. The equipment shall be screened from view to the approval of the Planning Division and reflected on the tenant improvement plans. (P) Previous Conditions of Approval
19. The applicant shall submit revised landscaping plans (landscape plans shall be completed and stamped by a licensed landscape architect) prior to building permit issuance that incorporate the following changes: (P) Previous Conditions of Approval
20. The revised landscaping plan should incorporate special treatments at driveway entrances into the shopping center. The revised landscaping plan shall incorporate 24-inch box trees that are of the broadleaf and deciduous type. (P) Previous Conditions of Approval
21. The revised landscaping plan shall use native and drought-tolerant plant materials.
 - a. The revised landscaping plan shall indicate new landscaping areas (minimum of 400 square feet).

- b. Mulch planting beds as a replacement for turf areas where possible, including the use of bark chips, wood grinding or leaves.
 - c. The revised landscaping plan shall have plantings grouped according to water needs.
 - d. An automatic water system utilizing low volume drip, spray or bubbler emitters shall be installed in landscape areas. Previous Conditions of Approval
22. Prior to issuance of a certificate of occupancy, the applicant shall provide proof of five (5) new garbage enclosures (front load service) or two (2) new compactors (with enclosures) for the entire shopping center. The new enclosures shall match the architecture and colors of the existing building. (P, cross referenced with Engineering Special Condition No. 30) Previous Conditions of Approval
23. Prior to issuance of a certificate of occupancy, an “Odorestor” unit shall be installed on the garbage bin and maintained in good working order. “Odorestor” units may be ordered through BFI. Please contact Cynthia Jackson, BFI Customer Service Supervisor, at (408) 432-1234 for more information. (P) Previous Conditions of Approval
24. Prior to issuance of building permits, plans shall include, at a minimum, two signs (to the approval of the City, one at each driveway to the rear area) that inform patrons of available parking at the rear of the building. (P) Previous Conditions of Approval
25. The driveway to the rear parking area at the west end of the site shall be maintained as a minimum 20-foot wide two-way drive aisle. (P) Previous Conditions of Approval
26. Prior to issuance of building permits, plans shall include “no parking” signs along the western access way to the rear parking area to the approval of the City. (P) Previous Conditions of Approval
27. During all construction activities, the developer shall adhere to the following Best Management Practices as suggested by the Bay Area Air Quality Management District (BAAQMD). These notes shall be placed on the Grading and Construction plans prior to permit issuance: (P) Previous Conditions of Approval
- a. Watering all exposed or disturbed soil surfaces, at least twice daily, as necessary to eliminate visible dust plumes;
 - b. Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a two feet freeboard level within their truck beds;
 - c. Enclose, cover, water twice daily, or apply (non-toxic) soil binders to exposed stockpiles of debris, soil, sand or other materials;
 - d. Suspension of all earthmoving or other dust-producing activities or equipment during periods of high winds when watering cannot eliminate dust plumes;
 - e. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
 - f. Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
 - g. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
 - h. Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more);

- i. Limit traffic speeds on unpaved roads or areas to 15 mph.
28. During construction, the developer/applicant shall adhere to the following Best Management Practices (BMPs) as suggested in the Santa Clara Valley Non-point Source Pollution Control Program's "Best Management Practices for Industrial Storm Water Pollution Control": (P) Previous Conditions of Approval
 - a. Store building materials under cover or in enclosed areas.
 - b. Before painting, spread a ground cloth to collect paint.
 - c. Mix paint indoors before starting work.
 - d. Keep paint buckets away from contact with storm water.
 - e. Capture any paint spills before they flow into a storm drain.
 - f. During painting cleanup use proper procedures and prevent paint from flowing into storm drains.
29. All new utilities shall be placed underground or in subsurface conduits. (P,E) Previous Conditions of Approval
30. The business owner shall hold training sessions to instruct their employees on the proper procedures in the handling and disposal of food items; the general maintenance and use of the compactor and any other procedures that would assist the business in complying with all state and local health and sanitation standards (refer to the County of Santa Clara Department of Environmental Health at (408) 729-5155 for their guidelines). (P) Previous Conditions of Approval
31. The business owner shall post signs (in English, Vietnamese, Chinese, Filipino and Spanish) inside the premises for all employees, which identify procedures for the food delivery and disposing of garbage prior to the issuance of a certificate of occupancy. (P) Previous Conditions of Approval
32. The preparation and storage of food shall not be permitted outside of the establishment in perpetuity. (P)
33. Washing of containers, equipment, and floor mats shall be conducted in the kitchen area so that wash water may drain into the sanitary sewer in perpetuity. (P) Previous Conditions of Approval
34. Prior to issuance of a certificate of occupancy, the business owner shall submit a report detailing a program assigning restaurant staff perpetual responsibility for complying with the following guidelines (P) Previous Conditions of Approval
 - a. Keep garbage dumpsters clean inside and out; replace dirty or leaking dumpsters with new, clean ones.
 - b. Double or triple bag waste to prevent leaking.
 - c. Place, do not drop or throw, waste-filled bags, to prevent leaking.
 - d. Keep the ground under and around the garbage dumpsters swept.
 - e. Sprinkle the ground lightly after sweeping with a mixture of water and a little bleach.

- f. It is expected that Best Management Practices for solid waste handling will advance over time, thus it is the expectation that the applicant will modify their practices in accordance with future standards.
35. If at the time of application for permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P) Previous Conditions of Approval
36. If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full. (P) Previous Conditions of Approval
37. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a building permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E) Previous Conditions of Approval
38. At the time of building permit plan check submittal the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to any permit issuance. (E) Previous Conditions of Approval
39. Prior to building permit issuance, the developer shall obtain design approval and bond for all necessary on-site public improvements, including but not limited to, relocation of existing water main, fire hydrant and water services. Plans for all public improvements shall be prepared on Mylar (24"x 36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. (E) Previous Conditions of Approval
40. Prior to any permit issuance the developer shall dedicate a new 15-foot wide water line easement and easement for relocated water meter, and successfully process the vacation of the existing water line easement. (E) Previous Conditions of Approval
41. The developer shall not obstruct the noted sight distance areas as indicated on the City standard drawing #405. Overall cumulative height of the grading, landscaping & signs as determined by sight distance shall not exceed 2 feet when measured from street elevation. (E) Previous Conditions of Approval
42. All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structures are permitted within City easements. (E) Previous Conditions of Approval
43. Prior to occupancy permit issuance, applicant or the shopping center owner shall construct a total of five trash enclosures or two compactor enclosures for the entire shopping center. The proposed enclosures shall be designed per the Development Guidelines for Solid Waste Services. City review/approval is required prior to construction of the enclosures. (E, Cross referenced with Planning Division Special Condition No. 9) Previous Conditions of Approval

44. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for commercial use: (E) Previous Conditions of Approval
45. Maintain an adequate level of service for trash collection. Increase service subscription to: garbage, 1 – 4cyd, 5x/wk; recycling, 1 – 4cyd 3x/wk. Previous Conditions of Approval
 - a. Maintain recycling services including separate services for beverage containers.
 - b. Maintain a tallow account and keep the tallow bins clean.
46. After the applicant has started its business, the solid waste service shall be evaluated by a BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E) Previous Conditions of Approval
47. Prior to any work within public right-of-way or City easement, the developer shall obtain an encroachment permit from City of Milpitas Engineering Division. (E) Previous Conditions of Approval

Planning = (P)

Engineering = (E)

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

June 28, 2006

**I.
PLEDGE OF
ALLEGIANCE**

Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Ali-Santosa, Azevedo, Ciardella, Galang, Mandal, and Williams
Absent: Tabladillo
Staff: Bejines, Carrington, Hom, Lowe and Williams

**III.
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
June 14, 2006.**

Chair Williams called for approval of the minutes of the Planning Commission meeting of June 14, 2006.

Staff made the following changes to the minutes:

- Page 6, 2nd paragraph - Ms. Odoyle changed to Mrs. Fe Aurelia V. Doyle, 80 Lonetree Court
- Page 6, 6th paragraph – Mike Nuvutny changed to Mike Novotny, 36 Greentree Way
- Page 7, 4th paragraph – Dennis Smith, 500 Glenmoor Circle
- Page 8, 10th paragraph – Russ Barstow to Russ Bargstadt, 1307 Stardust Way

Commissioner Ali-Santosa made the following changes to the minutes:

- Page 4, 3rd paragraph- Before the speakers spoke, Commissioner Ali-Santosa requested the proximity of his or her address with respect to the applicant's store.
- Page 11, 4th paragraph - Commissioner Ali-Santosa said he is concerned after reading some of the letters provided in the packet because he felt they were misleading. For example one of the letters written said, *"by allowing Jerry's Market to sell liquor, I can do all of my shopping and pay my PG&E bill at this store"*. The focus on the deliberation should be on the compatibility of land use, not opinions, not emotions, not speculation, but should be based on facts and data and evidence, by the people or stakeholders directly impacted such as the people behind the business. He has some concerns about allegations of wrongdoing and thinks the Commission needs to really take a hard look at that and doesn't think the Commission is ready to make a decision tonight. He also heard some unfairness about the notification process and thinks that needs to be addressed as well.

Motion to approve the corrected June 14, 2006 minutes.

M/S: Mandal/Ali-Santosa

AYES: 6

NOES: 0

**V.
ANNOUNCEMENTS**

Tom Williams, Planning and Neighborhood Services Director, announced that the Commissioners received the meeting minutes from the June 13th joint Planning Commission/City Council meeting and if there are any changes, let staff know by July 7th and they will forward the changes to the City Clerk's office.

Mr. Williams announced that July 4th at 11 a.m. is the City's Fourth of July parade. Immediately following the parade is a swim party at the Sports Center and at 8 p.m. is the beginning of the fire works show with a band playing at the actual fireworks starting at 9:30 p.m.

Mr. Williams introduced Kristine Lowe, new Associate Planner and welcomed her to the Planning Department.

Mr. Williams announced the subcommittee rotation schedule for July through September with Commissioner Tabladillo being the first active member, Chair Williams, second active member and Commissioner Ali-Santosa, alternate member.

Mr. Williams said a memorandum was distributed regarding Item No. 2 (Use Permit Amendment No. UA2006-6) including an E-mail from Mr. Bill Cilker, the owner of the adjacent commercial center.

Commissioner Azevedo said there was a diagram mentioned in the e-mail which was not included as part of an attachment. Mr. Williams said that Mr. Cilker will present that diagram to the Commission tonight.

Commissioner Mandal said that one of the items that came out of the joint City Council/Planning Commission meeting was that he is concerned about the City of Milpitas not taking a proactive role to provide alternative energy and would like staff to look at what other City's are doing and gather data such as cost estimates for permits. Time is going by and new construction is being done and now is the time to design alternative source of energy as part of the construction plan, depending on the outcome of the study.

Mr. Williams said that as a result of the meeting, City Council asked staff to do some preliminary investigation and is familiar with the LEED program, which is fast becoming the benchmark for green buildings. Staff is in the process of doing researching and will bring the information back to the Commission for review and a recommendation, and will move it forward to the City Council. Staff is anticipating bringing this forward to the Commission around October.

**VI.
CONFLICT
OF INTEREST**

Chair Williams asked if the Commission has any conflict of interest on tonight's agenda.

There were no Commissioners that identified a conflict of interest.

**VII.
APPROVAL OF
AGENDA**

Chair Williams called for approval of the agenda.

Commissioner Azevedo requested that Agenda Item No. 1 (Use Permit Amendment No. UA2006-3 and "S" Zone Amendment No. SA2006-13) be added to the consent calendar.

Motion to approve the modified agenda.

M/S: Azevedo/Galang

AYES: 6

NOES: 0

**VIII.
CONSENT CALENDAR
Item No. 1**

Chair Williams asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Staff had no changes to the consent calendar.

Chair Williams opened the public hearing on Consent Item No. 1.

There were no speakers from the audience.

Motion to close the public hearing on Consent Item No. 1.

M/S: Azevedo/Mandal

AYES: 6

NOES: 0

Motion to approve the consent calendar on Consent Item No. 1.

M/S: Azevedo/Mandal

AYES: 6

NOES: 0

***1. USE PERMIT AMENDMENT NO. UA2006-3 AND "S" ZONE
AMENDMENT NO. SA2006-13:** A request to install additional tract signage for new residential development located on the west and east side of South Abel Street between Corning and Curtis Avenue. *(Recommendation: Approve with Conditions)*

IX. PUBLIC HEARING

**1. USE PERMIT
AMENDMENT NO.
UA2006-6**

Cindy Hom, Project Planner, presented a request to add a 12' x 18' dance floor for an existing restaurant located at 269 W. Calaveras Boulevard and recommended approval with conditions based on the findings in the staff report.

Commissioner Azevedo said the Commission can't do anything about the parking problem other than impose special conditions and Ms. Hom said yes.

Commissioner Azevedo asked if the Commission could request signage and a parking monitor on certain days and Mr. Williams said that it is within the purview of the Commission to do that because this is a discretionary permit for the conditions under which the use operates.

Commissioner Mandal said that since this is a request for dancing and singing, were the neighborhood notified. Ms. Hom said the neighbors within 300 feet of the business were notified. Staff did receive one phone call asking for more information and an e-mail from Bill Cilker, adjacent owner.

Vice Chair Galang needed clarification on special condition no. 3 which reads below:

3. *Dancing is prohibited as a nightly use and shall be limited for banquet occasions only. (P)*

Ms. Hom said the intent of the condition is to prevent it from becoming a nightclub, which would not be a compatible use within the area.

Vice Chair Galang asked if they sell liquor, beer and wine and Ms. Hom said yes but there is no bar.

Vice Chair Galang needed clarification on special condition no. 4 that reads below:

4. *Associated live entertainment and pre-recorded music used in conjunction with the dance floor shall be limited so that the sound shall be confined to the interior of the structure; and further that when the live entertainment is performed, all windows and doors within the facility shall be closed, except when entering and leaving by the main entrance of the facility. That any entertainment (live, disc jockey, etc.) provided shall not disturb any nearby business and shall not be audible outside of the building. (P)*

Ms. Hom explained that pre-recorded music is DJ music and a live band is classified as live entertainment.

Vice Chair Galang asked if live music could be heard outside of the restaurant. Ms. Hom said that according to the special conditions, live music cannot be audible outside of the building, and when the dance floor is being used and music is being played, the doors must be closed and rules must comply with the Milpitas Municipal Code and the noise ordinance. Also, the restaurant closes at 10 p.m.

Vice Chair Galang suggested that the applicant add double swing doors to prevent the noise from drifting out of the restaurant. Mr. Williams said that might be a building code issue.

Vice Chair Galang asked if the applicant or owner will provide security. Ms. Hom said that if the reception event was large in size, it would be the responsibility of the applicant to submit a security plan to the police and planning department.

Commissioner Ciardella asked how often does code enforcement go out to the restaurants and make sure there are enough chairs for the occupants. Mr. Williams said that only if the City receives a complaint will the Fire Marshall and code enforcement go out to the site.

Commissioner Ciardella said that if he was the owner, he would be tempted to move the chairs around to make room for the dance floor. He was concerned about the size of the place and was concerned about a band being able to fit inside the restaurant. He counted the number of chairs and it was a little less than 100.

Ms. Hom deferred the question to the applicant.

Commissioner Mandal said that he concerned about parking because whenever he visits the shopping center, the parking is very full and asked staff about the results of the parking study. Ms. Hom said that part of the 2003 approval, in order to substantiate the parking reduction they had was to provide a parking study. Through that study, they had identified that there was enough parking to accommodate the use. Additionally, staff did include a condition of approval no. 26 which reads below:

26. *Prior to issuance of building permits, plans shall include "no parking" signs along the western access way to the rear parking area to the approval of the City. (P)*
Previous Conditions of Approval

Commissioner Azevedo asked since 2003, how many more businesses have gone into the previous bank location and Ms. Hom said three restaurants.

Commissioner Azevedo felt that part of the problem was adding new businesses on the site when there is a parking problem.

Chair Williams asked if the parking behind Save Mart is available and Ms. Hom said yes.

Chair Williams said that he is concerned that the partying will concern homeowners. He asked if there were any studies done relative to evening or lunchtime parking on the Calaveras side close to Burger King. Ms. Hom said that in terms of the parking study it would be inclusive of the entire site.

Chair Williams introduced the applicant.

Eddie Shen, Architect for King Crab, representing Mr. Peter Chen, 102 Persian Drive, Sunnyvale. Mr. Shen said that all of the restaurants were built about the same time and the parking was studied at that time, and there were ample vacant spots during 2003. He believes that the economy is getting better, and as far as parking is concerned, there seems to be available parking on the other side of Burger King, however people are lazy and don't want to walk. He pointed out that the dance floor is strictly for a wedding or baby shower and only light music will be played. There will not be daily entertainment.

Commissioner Azevedo asked where will the music band be and Mr. Shen said on the side.

Commissioner Azevedo asked what the property owner has done about people parking on the property next to the business. Mr. Shen said that Mr. Chen has a sign already that informs patrons not to park on the other side.

Commissioner Azevedo said King Crab is a good establishment however the problem is the businesses keep expanding and there is not enough parking.

Commissioner Ciardella suggested that the band speakers be faced towards the kitchen instead of the parking lot. Mr. Shen said that it is the responsibility of the owner to control the sound.

Vice Chair Galang said that he supports the project and asked what type of material is the dance floor made of and Mr. Shen said that it is a hardwood floor and is permanent.

Chair Williams said that the owner has an existing sign to advise patrons to not park in the area however he is curious and concerned about why the signs are not effective. He said that it is about everyone wanting to be close to where they go and it does present a problem for anything that is going to increase in size such as an event or wedding. He asked when will the wedding functions be taken place. Mr. Shen said on Fridays, Saturdays and Sundays.

Mr. Shen reiterated that there will not be an increase in seating and is already limited to what has been approved. Chair Williams said he understands however at wedding functions, there are a number of people arriving at the same time versus a sandwich shop where people stagger in at different times.

Commissioner Ali-Santosa asked if it would be appropriate to have a sign that states additional parking available on the other side of the parking lot and Mr. Shen said that it is already there.

Commissioner Azevedo said the problem with the signage is that customers will cooperate however the landowner should be cooperative as well. Mr. Shen asked how do you monitor something like that.

Vice Chair Galang suggested that the owner have a trial run of loud music to hear how loud the noise is outside so that he control the music during a function. Mr. Shen reiterated that is the owner's responsibility to control the noise.

Commissioner Mandal asked if there is a different kind of permit required for karaoke. Ms. Hom said that live entertainment encompasses amplified music, karaoke and dancing.

Commissioner Mandal said that something needs to be done to mitigate the noise. He asked if in the back of the building, the back door opens up which blasts the noise towards the neighborhood, is that mitigated. Ms. Hom said that there is a condition of approval that requires all windows and doors be closed when a dance is in operation.

Commissioner Ciardella asked if the dance floor will be at the same level with the main floor and Mr. Shen said yes.

Vice Chair Galang asked if on a Friday or Saturday evening if an event is not taking place, will music be played. Mr. Shen said light music will be played and there will not be dancing.

Chair Williams opened the public hearing.

Bill Cilker, 524 Vista Ridge Drive, Milpitas Shopping Center owner, next to Calaveras Plaza Shopping Center, said that parking is a main problem during lunchtime and he has done way more above and beyond what should be done by telling patrons of Calaveras Plaza Shopping Center not to park in his center. He has the right to tow people but hasn't done it. He would like to see the landowner hire someone to walk up and down telling people to move. He also suggested that maybe employees can park in back of the businesses and leave the parking open for tenants.

Commissioner Azevedo asked how many parking spaces is the center short of. Mr. Cilker said that part of the problem is that the parking to the west is paid for by Kelly Moore, Party City and Milpitas Shopping Center and includes the upkeep, cleaning, maintenance and striping. Calaveras Plaza does not pay for any of that. Since the new restaurants have come in, Milpitas Shopping Center has had to up the amount of cleaning because of more people parking there. He doesn't mind the crossover however he felt that there needs to be relief in the number of spaces the patrons occupy because the Milpitas Shopping Center businesses are suffering.

Commissioner Azevedo asked if there are parking spaces available near Burger King and Mr. Cilker said he is not sure.

Commissioner Azevedo said that if the Commission were to request a parking monitor, what would be the best time to do it. Mr. Cilker said lunchtime because that is the busiest time of the day.

Commissioner Ciardella asked if Mr. Cilker felt that the cars are coming from Calaveras Blvd. or Abbott. Mr. Cilker said the majority of cars that park in his center are from Abbott and he has put up signs but they do not help a whole lot.

Chair Williams asked if the patrons are more for Lee's Sandwiches or King Crab. Mr. Cilker said it is hard to know but he would say the first row of parking tends to be King Crab and then the other row is for the sandwich shop. The sandwich shop has more turnover and King Crab patrons stay longer.

Commissioner Mandal is concerned that Mr. Cilker has to monitor the parking lot. Mr. Cilker said that it started when Lee's sandwiches opened up, and then King Crab opened up.

Commissioner Mandal asked if Mr. Cilker has tried to talk to the property owner and maybe put a wall there. Mr. Cilker said that the property owner will not return his calls and he did talk to her about putting up a fence up however she threatened to block it off completely. He felt that asking people to move will keep it open enough so as not to take drastic measures such as putting up a wall.

Commissioner Mandal said he is not suggesting a wall he just wanted to see where this has gone with the property owner. Mr. Cilker said that he is tempted to put a construction wall up and get the point across. When he talked to Lee's sandwiches and King Crab they said it is the property owner's problem not theirs. The property owner did put a sign up that says no restaurant parking beyond here but it is not in the best location.

Commissioner Azevedo needed clarification about the parking sign. Mr. Cilker said that there is a sign on the left side of his property with the arrow pointing to the back of the building near the alley.

Mr. Shen suggested putting up cones on the property line during lunchtime

Close the public hearing

Motion to close the public hearing.

M/S: Mandal/Azevedo

AYES: 6

NOES: 0

Chair Williams commented that there has always been problems with the property owner and neighbors complaining about noise and issues and it has been very difficult for staff to work with the property owner. He sees this as a systemic issue because there are various developments in the area and it not fair for the property owner to burden the tenants in trying to condition the property owner to do something. Staff had to get the property owner involved in the last situation and it took a couple of sessions for the property owner to cooperate. He doesn't want King Crab to lose business however he felt that the property owner should be involved.

Commissioner Azevedo asked how staff can get the property owner involved. Mr. Williams said that the issue at hand is for this specific business and is not for the shopping center so the Use Permit is the only tool staff has for the operation of the business. If there was a code enforcement issue such as deficient parking, staff could move forward through code enforcement so the parking lot is in compliance and there are currently 69 parking spaces they are deficient. In terms of managing the program, his recommendation is moving towards the direction of a parking monitor.

Commissioner Azevedo said that sooner or later the Commission needs to take a stand because the property owner is the one who is collecting the money and does not get involved in the process.

Mr. Williams said that the issue is if this amendment they are applying for impacts parking.

Commissioner Ciardella suggested that if you drive down Calaveras and make a right turn into the shopping center and if there wasn't so much parking on the right hand side and if that planter box was opened up, and then have a sign that says restaurant parking, could possibly provide two or three parking spots and might alleviate the parking problem.

Commissioner Azevedo said that the Commission has tried doing that in the past but hasn't been able to do that because of Caltrans and the property owner.

Commissioner Ciardella said he is trying to help the other shopping center with the problem of parking and for the restaurant to have to put a monitor up there, doesn't think it is fair.

Commissioner Mandal said he is supportive of a restaurant trying to expand and promote business and bring more dollars to the area. Then he drives to the City and on every parking lot there are tow away signs if you are not the customer of the establishment. He doesn't think those signs would be effective in Milpitas and felt that it is a tough situation to hire a parking monitor full time during the week. He would like to see the property owner do this and asked if the Commission could condition the property owner. Mr. Williams said the Commission cannot do that.

Mr. Williams said if the property owner comes in for an improvement or expansion to a building, let's say in this situation there is an existing building and King Crab wants to expand, with that expansion, not only would the Commission be conditioning King Crab but would also condition the property owner. But since this is a use permit for the operation of a specific restaurant, the Commission is limited in the ability to add additional site requirements or existing conditions that are not applying for the permit.

Chair Williams said he is concerned because if the applicant has an event and he tells everyone to park on the Calaveras Plaza side, then the patrons from Lee's Sandwiches will park in the Milpitas Shopping Center, so there is a situation of overflow of parking. He is leaning towards a motion to deny the permit on the basis of the parking problem and would almost deny any future activities of this property because of the lack of cooperation of the property owner who hasn't shown diligence or wanting to cooperate.

Vice Chair Galang said that if there was an event at King Crab, his first choice would be to park near King Crab, if not, he would have to go around on the west side of King Crab near Kelly Moore, especially if there are no signs that say no parking.

Mr. Williams said that if the Commission chooses to deny the application it would be because the use is incompatible with finding no. 3 that reads below:

3. The proposed project will not create any negative community impacts or be detrimental to public health, safety and general welfare. The dance floor is an ancillary use to the primary restaurant use and will not impact parking, noise, or odors.

Commissioner Mandal asked if finding no. 3 is based on fire department or police department codes. Mr. Williams said that the Commission needs to find that because if there is deficient parking, it creates a negative impact to the community and the Commission finds that the dance floor will impact parking.

Commissioner Ali-Santosa said that when looking at the parking situation, it is a pre-existing condition and asked if the Commission takes that into account. Mr. Williams said that the Commission needs to ask themselves if by approving this use permit amendment, does the Commission believe that the parking will exacerbate the problem, and if the Commission believes that, then that is the grounds for which the Commission can deny the project.

Motion to deny Use Permit Amendment No. UA2006-6 because it is incompatible with finding no. 3.

M/S: Azevedo/Ciardella

AYES: 6

NOES: 0

Commissioner Azevedo said that he recommended denial because of lack of cooperation from the property owner and lack of parking. He really sympathizes with the applicant and asked Mr. Shen to express his feelings to the applicant

**X.
ADJOURNMENT**

Mr. Williams announced that the election of officers for Chair and Vice Chair would be held at the July 12th Commission meeting.

The meeting was adjourned at 8:32 p.m. to the next regular meeting of July 12, 2006.

Respectfully Submitted,

Tom Williams
Planning and Neighborhood Services
Director

Veronica Bejines
Recording Secretary

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